

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JAMES PERKINS,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH  
SERVICES,

Respondent.

) Case No. SUSP-00-0041

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

**I. INTRODUCTION**

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair. The hearing was held at the Attorney General's Office, West 1116 Riverside Avenue, Spokane, Washington, on February 27 and 28, 2002. GERALD L. MORGEN, Vice Chair, reviewed the file, exhibits and recorded proceedings and participated in the decision in this matter. RENÉ EWING, Member, did not participate in the hearing or the decision in this matter.

1.2 **Appearances.** Appellant James Perkins was present and was represented by Christopher Coker, Attorney at Law, of Parr and Younglove, P.L.L.C. Patricia A. Thompson, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of a seven-day suspension for neglect of duty and gross misconduct. Respondent alleges that Appellant 1) authorized services

1 for children in his caseload while engaged in a personal relationship with the mother of the children  
2 and 2) attempted to solicit assistance from the children's mother regarding the redistribution of case  
3 managers.

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5 1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084  
6 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Rainwater v.  
7 School for the Deaf, PAB No. D89-004 (1989).

## 8 9 **II. FINDINGS OF FACT**

10 2.1 Appellant James Perkins was a Developmental Disabilities Outstation Manager and  
11 permanent employee for Respondent Department of Social and Health Services for the Division of  
12 Developmental Disabilities (DDD). Appellant and Respondent are subject to Chapters 41.06 and  
13 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a  
14 timely appeal with the Personnel Appeals Board on October 30, 2000.

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16 2.2 By letter dated August 29, 2000, Mr. Laurie Zapf, Administrator for Region 1 of the  
17 Division of Developmental Disabilities, informed Appellant of his seven-day suspension effective  
18 October 2, 2000 continuing through October 8, 2000. Mr. Zapf charged Appellant with neglect of  
19 duty and gross misconduct, and he specifically alleged that Appellant 1) engaged in unprofessional  
20 behavior when he authorized services for children of the Behrens' family while at the same time  
21 involved in a personal relationship with their mother, Rhoda Behrens-Hoisington, and 2) when he  
22 attempted to create and encourage resistance to a management proposed redistribution of case  
23 managers for consumers residing in south Stevens County by soliciting assistance from Rhoda  
24 Behrens-Hoisington.

1 2.3 Appellant was the Outstation Manager for the Division of Development Disabilities office in  
2 Colville, Washington. Appellant was a leadworker responsible for providing services to  
3 developmentally disabled individuals in three counties. Appellant's duties included determining  
4 eligibility and approving services, managing medically intensive services, and providing family  
5 support services. Appellant also prepared Comprehensive Assessments and Individual Service  
6 Plans for individuals on his caseload. Appellant performed his work independently and with little  
7 supervision.

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9 2.4 Rhoda Behrens-Hoisington is the mother of three developmentally disabled children that are  
10 eligible to receive services from DDD. From December 1996 through early 1998, Appellant was  
11 the case manager for Ms. Behrens' children. In April 2000, Ms. Behrens came forward to allege  
12 that 1) she and Appellant had engaged in a personal relationship beginning in December 1996 and  
13 lasting through April 1998 and 2) that in late 1999, Appellant sought Ms. Behrens' help to  
14 encourage resistance to the redistribution of his caseload.

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16 **Allegation #1**

17 2.5 We find that a preponderance of the evidence establishes that Appellant and Ms. Behrens  
18 engaged in a personal relationship, which included meeting to have lunch, hugging and kissing. We  
19 find no convincing reasons why Ms. Behrens would fabricate allegations that she and Appellant  
20 were engaged in a personal relationship, and we find her testimony and version of the events  
21 credible. Furthermore, Appellant's admissions during the investigation support, rather than refute,  
22 that he was engaged in a relationship with Ms. Behrens that went beyond a professional  
23 relationship. Respondent presented credible evidence to establish the following events:

- 24  
25
  - Appellant and Ms. Behrens shared a picnic lunch in the backyard of Ms. Behrens home;
  - Both Appellant and Ms. Behrens exchanged extensive personal information about each other;26

- Ms. Behrens sent Appellant numerous letters to his post office box address, including an envelope filled with pictures of herself and her children. Appellant later returned the pictures to Marion Anderson-Skeen, an in-home care provider for one of Ms. Behrens' children;
- Appellant and Ms. Behrens met at a Native American Interpretive Center where Appellant conducted a healing ceremony on Ms. Behrens-Hoisington.

2.6 It is also undisputed that Ms. Behrens had Appellant's home phone number and that she initiated dozens of calls to Appellant's home phone number. Some calls lasted under five minutes, some for approximately 15 minutes, and at least one conversation lasted for over an hour. In addition, many of the calls occurred on evenings and weekends when Appellant was not on duty and had no business reasons to be engaged in conversations with Ms. Behrens.

2.7 In early 1998, Ms. Behrens terminated her personal relationship with Appellant, and she married Rick Hoisington in October 1998. However, Appellant continued to work as the case manager for Ms. Behrens' children, and he completed assessments on and authorized services for Ms. Behrens' son, B.B.

## **Allegation #2**

2.8 In Fall 1999, DDD management made a decision to redistribute the caseload in south Stevens County to better meet the needs of the department's clients who resided near the Spokane area. The redistribution of cases would result in a reduction in Appellant's caseload.

2.9 Appellant denies that he asked Ms. Behrens to oppose the redistribution of his caseload, however, we find that a preponderance of the credible evidence established that Ms. Behrens actions and letters concerning her opposition to the redistribution resulted from Appellant's undue influence and pressure to convince Ms. Behrens that her children would be left unprotected. Respondent presented credible evidence to establish the following events:

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2 2.10 In September 1999, Appellant contacted Ms. Behrens and informed her that the transfer of  
3 cases included her case and that DSHS would take her children out of his caseload. Appellant told  
4 Ms. Behrens that the children would not receive the same level or quality of case management and  
5 services, that the department was discriminating against her, was attempting to isolate her family  
6 and that she would no longer have his protection. Appellant asked Ms. Behrens to help him defeat  
7 the plan by writing letters to the department in opposition of the redistribution. Appellant provided  
8 Ms. Behrens with terminology to use in her letters that would support her position.  
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10 2.11 Although Ms. Behrens had ended their personal relationship, she continued to believe that  
11 Appellant was an outstanding case manager who liked her children, understood their special needs  
12 and always made case management decisions in the best interest of the children. In addition,  
13 Appellant had a good working relationship with her son B.B., who was severely disabled but felt  
14 comfortable with Appellant's presence. Ms. Behrens described Appellant as her "hero" and as an  
15 individual who stood up for and fought on behalf of the developmentally disabled. Based on  
16 Appellant's statements, Ms. Behrens reasonably feared that her children were in jeopardy of losing  
17 DDD services and she feared she could eventually lose custody of them. Ms. Behrens became  
18 extremely upset, and she agreed to help Appellant fight the caseload redistribution.  
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20 2.12 Ms. Behrens immediately began a campaign against the redistribution of the Stevens County  
21 caseload. By letter dated September 9, 1999, addressed to Appellant, Ms. Behrens wrote that she  
22 was "highly resistant" to the transfer and that "due to the extensive history and uniqueness" of her  
23 family it would not be in the "best interest to have our case transferred." In addition, Ms. Behrens  
24 authored a similar letter dated September 20, 1999, to Appellant's supervisor, Joyce Malone, Case  
25 Resource Manager, expressing her opposition to the case redistribution. By letter dated October 1,  
26 1999, Ms. Behrens wrote to Karen Santschi, Region 1 DDD Administrator, also challenging the

1 decision. Ms. Behrens used terminology in her letters, such as “highly resistant” and “fractured,” at  
2 Appellant’s request to reinforce and support her position. In addition, Ms. Behrens took out a  
3 newspaper ad asking for support from the public to stop the caseload redistribution.

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5 2.13 Laurie Zapf, former Administrator for the Division of Developmental Disabilities, was  
6 Appellant’s appointing authority when the discipline was imposed. After reviewing the results of  
7 two separate investigations into the allegations, Mr. Zapf concluded that Appellant engaged in  
8 misconduct when he entered into a personal relationship with Ms. Behrens while authorizing and  
9 approving public services for her children and when he used his relationship with Ms. Behrens to  
10 convince her to oppose and disrupt a management effort to redistribute the caseload in south  
11 Stevens County. Mr. Zapf concluded that Appellant’s admissions, particularly his admission of  
12 meeting Ms. Behrens to perform a healing ceremony, demonstrated that his relationship with Ms.  
13 Behrens went beyond a professional relationship. Furthermore, Mr. Zapf concluded that the “buzz  
14 words” used by Ms. Behrens to express opposition to the case management redistribution also  
15 demonstrated that Appellant convinced Ms. Behrens to oppose the decision. Mr. Zapf also believed  
16 that Appellant manipulated Ms. Behrens by instilling fear in her that her children would not receive  
17 the same level of services from DSHS.

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19 2.14 In assessing the level of discipline, Mr. Zapf considered Appellant’s history with the  
20 department, which contained no prior history of disciplinary action, but did include a letter of  
21 reprimand dated October 5, 1999, which addressed Appellant’s interactions with another client.  
22 Mr. Zapf considered Appellant’s actions to be contrary to the agency’s mission, and he imposed a  
23 seven-day suspension to impress on Appellant the seriousness of his misconduct and to demonstrate  
24 that the department would not tolerate his type of behavior.

### III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant neglected his duty when he entered into an unprofessional relationship with Ms. Behrens while authorizing services for her children and when he coerced Ms. Behrens to oppose and resist the changes in the Stevens County caseload redistribution. Respondent argues that Ms. Behrens' testimony has been consistent and that the testimony of other witnesses support that Ms. Behrens and Appellant were engaged in a personal relationship. Respondent further argues that Appellant played on Ms. Behrens' fears regarding her children and therefore he was able to persuade her to oppose the case redistribution. Respondent argues that Appellant provided Ms. Behrens with terms to use in her letters that a client would not know or understand. Respondent argues that the evidence and testimony support that Appellant took advantage of Ms. Behrens when he engaged in a relationship with her and encouraged her to oppose the case distribution movement because it affected his livelihood, that his behavior rose to the level of gross misconduct and that the discipline imposed was minimal.

3.2 Appellant argues that there is no evidence of impropriety or of an inappropriate relationship between him and Ms. Behrens. Appellant asserts that Ms. Behrens was unstable and under the care of a psychologist and that her testimony has been inconsistent and unbelievable. Appellant asserts Respondent did not present a preponderance of evidence to support that he engaged in any misconduct, but rather that the evidence supported it was Ms. Behrens who contacted and displayed an interest in him. Appellant denies that he contacted Ms. Behrens or encouraged her to fight the department's decision to redistribute the caseload. Appellant asserts that he was an 11-year state employee with a good work history, and that he always acted professionally and cared about his clients. Appellant argues that Respondent failed to meet its burden and that his appeal should be granted.

### IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.

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2 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
3 the charges upon which the action was initiated by proving by a preponderance of the credible  
4 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
5 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
6 Corrections, PAB No. D82-084 (1983).

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8 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
9 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
10 of Social & Health Services, PAB No. D86-119 (1987).

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12 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
13 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

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15 4.5 In his capacity as a Developmental Disabilities Outstation Manager, Appellant had a  
16 responsibility to demonstrate a high level of personal integrity and not engage in any activity which  
17 could represent a conflict of interest. As an employer, Respondent has a responsibility to ensure  
18 that its employees serve the public with respect and conduct business in an ethical manner.  
19 Respondent has met its burden of proof that Appellant was engaged in a non-official, personal  
20 relationship with the mother of children on his caseload and that he continued to act as the  
21 children's case manager and to approve services while engaged in that relationship. Furthermore,  
22 Respondent has met its burden of proving by a preponderance of the credible evidence that  
23 Appellant was deceptive and abused his authority when he unduly influenced Ms. Behrens to resist  
24 management's caseload redistribution plans.



1 4.6 Respondent has proven that Appellant failed to conduct himself in a professional manner  
2 and that he neglected his duty. Furthermore, Respondent has proven that Appellant's misconduct  
3 had a negative impact on the department and constituted gross misconduct. Under the facts and  
4 circumstances of this case, including the seriousness of Appellant's misconduct, we conclude that  
5 Respondent has proven that the sanction of a seven-day suspension is appropriate and the appeal  
6 should be denied.

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8 **V. ORDER**

9 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of James Perkins is denied.

10  
11 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

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13 WASHINGTON STATE PERSONNEL APPEALS BOARD

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16 Walter T. Hubbard, Chair

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19 Gerald L. Morgen, Vice Chair  
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